

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT J. GROSS,

Defendant.

Case No. 18-00003-01-CR-W-GAF

GOVERNMENT’S SUPPLEMENTAL SENTENCING MEMORANDUM

Upon remand from the Eighth Circuit Court of Appeals, this case is currently scheduled for resentencing on Thursday, May 12, 2022, at 10:00 a.m. The Eighth Circuit vacated the defendant’s conviction on Count One and remanded the case for resentencing. *United States v. Gross*, 23 F.4th 1048, 1056 (8th Cir. 2022). The sentences were vacated on all counts in order to provide this Court the opportunity to reconfigure the sentencing plan to allow full consideration of the sentencing factors. *Id.* at 1056.

This Court originally sentenced the defendant to 420 months’ imprisonment by packaging multiple counts of conviction. In order to achieve the same overall sentence package of 420 months, the Government recommends that the Court impose a sentence of five years imprisonment on Counts Two, Six, Eight and Ten; and ten years imprisonment on Counts Five, Seven, and Nine. The Government further requests that the Court order the sentences on Counts Two, Five, Seven, and Nine to run consecutive to each other, and order the sentences on Counts Six, Eight and Ten

to run concurrent with each other and the other counts of conviction.¹ This allows the Court, after fully considering the sentencing factors in 18 U.S.C. § 3553(a), to achieve the Court's original total combined sentence of 420 months' imprisonment.

The Government incorporates by reference all arguments previously made in its original sentencing memorandum and during the original sentencing hearing, in support of its continued request for an upward variance from the Sentencing Guidelines in this case. For the foregoing reasons, the United States respectfully requests that the Court impose sentence in accordance with the recommendations made herein.

Respectfully submitted,

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United States Attorney

By /s/Jess E. Michaelsen

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¹The Government requests the Court order the sentences on the Felon in Possession of firearm counts and companion receiving of the same firearm while under indictment counts to be run concurrently and not consecutively. During oral argument on appeal, the Eighth Circuit raised the issue of whether Gross could be sentenced for both receipt and possession of the same firearm, in violation of both 18 U.S.C. § 922(n) and 18 U.S.C. § 922(g)(1). *Id.* at 1056 & n.7. After supplemental briefing from the parties on the issue, the Eighth Circuit summarily decided the issue in favor of the Government. *Id.* While the Government believes it would not be error to order the counts served consecutively, to do so would unnecessarily invite further litigation on the topic when the Court's original sentencing package could be achieved without doing so.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on May 2, 2022, to the Electronic Filing System (CM/ECF) of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/Jess E. Michaelsen

Jess E. Michaelsen

Assistant United States Attorney